

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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ROBERT WHITE,

Case No. 3:25-cv-00089-MMD-CLB

**Petitioner,**

## ORDER

**STATE OF NEVADA, *et al.*,**

## Respondents.

12 Pro se Petitioner Robert White filed a petition for writ of habeas corpus under 28  
13 U.S.C. § 2254 (“Petition”), and following the Court’s initial review of the Petition, White  
14 was ordered to show cause why his Petition should not be dismissed with prejudice as  
15 untimely. (ECF Nos. 1, 4.) White timely complied. (ECF No. 11.) For the reasons  
16 discussed below, the Court dismisses the Petition with prejudice as untimely.

## I. BACKGROUND<sup>1</sup>

White challenges a conviction and sentence imposed by the Second Judicial District Court for Washoe County (“state court”). On October 1, 1999, the state court entered a judgment of conviction, convicting White of second-degree murder. White was sentenced to life in prison with the possibility of parole after 10 years. White did not appeal his judgment of conviction. On June 11, 2024, White filed a state habeas petition. The state court denied the petition, White appealed, and the Nevada Court of Appeals affirmed on January 31, 2025. See *White v. State*, No. 88990-COA, 2025 WL 366083, \*1 (Nev. App. Jan. 31, 2025). White is currently on parole.

<sup>26</sup>           <sup>1</sup> The Court takes judicial notice of the online docket records of the Second Judicial  
27 District Court and Nevada appellate courts. These docket records may be accessed at:  
28 <https://www.washoecourts.com/Query/DetailedCaseSearch> and  
<http://caseinfo.nvsupremecourt.us/public/caseSearch.do>.

1       On February 14, 2025, White filed his Petition, asserting that the Department of  
2 Parole and Probation did not make its sentencing recommendation on a standard set  
3 forth in any regulation in compliance with its statutory mandate, resulting in inaccurate  
4 and subjective content being considered by his sentencing judge in violation of his due  
5 process rights. (ECF No. 1.)

6 **II. DISCUSSION**

7       The Antiterrorism and Effective Death Penalty Act ("AEDPA") establishes a one-  
8 year period of limitations for state prisoners to file a federal habeas petition pursuant to  
9 28 U.S.C. § 2254. The one-year limitation period (365 days) begins to run from the latest  
10 of 4 possible triggering dates, with the most common being the date on which the  
11 petitioner's judgment of conviction became final by either the conclusion of direct  
12 appellate review or the expiration of the time for seeking such review. See 28 U.S.C.  
13 § 2244(d)(1)(A). The federal limitations period is tolled while "a properly filed application  
14 for State post-conviction or other collateral review with respect to the pertinent judgment  
15 or claim is pending." *Id.* at § 2244(d)(2). But no statutory tolling is allowed for the period  
16 between finality of a direct appeal and the filing of a petition for post-conviction relief in  
17 state court because no state court proceeding is pending during that time. See *Nino v.*  
18 *Galaza*, 183 F.3d 1003, 1006-07 (9th Cir. 1999); *Rasberry v. Garcia*, 448 F.3d 1150, 1153  
19 n.1 (9th Cir. 2006).

20       Because White did not file a direct appeal to the Nevada appellate courts  
21 challenging his judgment of conviction, his conviction became final on the date in which  
22 the time for seeking direct review expired: November 1, 1999. See Nev. R. APP. P. 4(b)(1)  
23 (requiring a notice of appeal to "be filed with the district court clerk within 30 days after  
24 the entry of the judgment or order being appealed"); *Gonzalez v. Thaler*, 565 U.S. 134,  
25 137 (2012) (stating that when a state prisoner "does not seek review in a State's highest  
26 court, the judgment becomes 'final' on the date that the time for seeking such review  
27 expires"). The federal statute of limitations thus began to run the following day on  
28 November 2, 1999. Accordingly, the limitations period expired 365 days later on

1 November 2, 2000. Although White filed a state habeas petition on June 11, 2024, it was  
 2 filed after the AEDPA clock had already expired. As such, White's state habeas petition  
 3 could not have tolled an already expired limitations period. See *Jiminez v. Rice*, 276 F.3d  
 4 478, 482 (9th Cir. 2001). Accordingly, White filed his Petition more than 24 years after the  
 5 AEDPA limitation period expired.

6 In his response to the order to show cause, White contends that his one-year  
 7 limitations period began running on a later date. (ECF No. 11.) Specifically, White argues  
 8 that the "essential facts and information were not previously available to him" until the  
 9 Nevada Court of Appeals decided *Vasquez v. State*.<sup>2</sup> (*Id.* at 1.) White fails to demonstrate  
 10 that delayed accrual—even if deemed appropriate under 28 U.S.C. § 2244(d)(1)(B), (C),  
 11 or (D), which the Court does not find—would affect the timeliness of his Petition given  
 12 that (1) the operative start date of his AEDPA limitations period would be the date  
 13 *Vasquez* was decided, (2) *Vasquez* was decided in 2020, and (3) White did not seek  
 14 habeas relief within a year of *Vasquez* being decided. See *Dodd v. United States*, 545  
 15 U.S. 353, 360 (2005) (concluding that, under the similar provision in 28 U.S.C. § 2255(f),  
 16 the one-year limitations period started running on the date in which the Court initially  
 17 recognized the right asserted). As such, the Court finds that White's Petition is untimely  
 18 and dismisses it with prejudice.

19 **III. CONCLUSION**

20 It is therefore ordered that the Petition (ECF No. 1) is dismissed with prejudice  
 21 as untimely.

22 It is further ordered that a certificate of appealability is denied, as jurists of reason  
 23 would not find dismissal of the Petition for the reasons stated herein to be debatable  
 24 or wrong.

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26       <sup>2</sup>In *Vasquez v. State*, the Nevada Court of Appeals remanded the case to the  
 27 district court, concluding that it "abused its discretion by sentencing Vasquez without due  
 28 consideration to his objections to the PSI." No. 79409-COA, 2020 WL 4696206, \*1 (Nev.  
 App. Aug. 12, 2020).

1 It is further ordered that the Clerk of Court add Nevada Attorney General Aaron D.  
2 Ford as counsel for Respondents,<sup>3</sup> informally serve the Nevada Attorney General with  
3 the Petition (ECF No. 1), this Order, and all other filings in this matter by sending notices  
4 of electronic filing to the Nevada Attorney General's office, enter final judgment,  
5 dismissing this action with prejudice, and close this case.

6 DATED THIS 11<sup>th</sup> Day of April 2025.

MIRANDA M. DU  
UNITED STATES DISTRICT JUDGE

<sup>3</sup>No response is required from Respondents other than to respond to any orders of a reviewing court.